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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,441	09/16/2003	Finn Myhren	063779-5001	9826
9629 7590 06/16/2010 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
BADJO, BARBARA P				
ART UNIT		PAPER NUMBER		
1628				
MAIL DATE		DELIVERY MODE		
06/16/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/662,441

Applicant(s)

MYHREN ET AL.

Examiner

Barbara P. Badio

Art Unit

1628

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57, 70, 71 and 88 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 57, 70, 71 and 88 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date: ____

Final Office Action on the Merits of a RCE

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Status of the Application

2. Claims 57, 70, 71 and 88 are pending in the present application. The instant claims stand rejected as indicated below.

Claim Rejections - 35 USC § 103

3. **The rejection of claims 57, 70, 71 and 88 under 35 USC 103(a) over Saulnier et al. (EP 320988, 2989) is withdrawn.**

4. Claims 57, 70, 71 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Favre et al. (US 5,324,821).

Favre et al. teaches preparation of lipoproteins modified by incorporation of a lipophilic active substance such as a fatty acid derivative of an antineoplastic agents (see the entire article, Abstract; col. 2, lines 54-64; col. 3, lines 10-30). The reference teaches (a) antineoplastic agents such as mitoxantrone and methotrexate and exemplifies mitoxantrone dilinolenate (see col. 3, lines 47-56; cols. 5/6, Example 1); (b) the incorporation of biologically active substances into lipoproteins is useful in avoiding the use of undesirable substances such as detergents and the alteration of LDL

biological activity (see col. 2, lines 40-51) and (c) pharmaceutical compositions for use corresponding to the therapeutic domain of the drug incorporated into the lipoproteins (see col. 5, lines 12-15).

The instant claims differ from the reference by reciting the corresponding 9-monounstaturated C18 or C20 derivatives. However, Favre teaches acylation utilizing fatty acids having saturated or unsaturated 4 to 24 carbon atoms including palmitic, stearic, **oleic**, linolenic and lignoceric acids (see col. 3, lines 60-65). Therefore, it would have been obvious to the skilled artisan in the art at the time of the present invention to make the oleic acid derivatives of antineoplastic agents such as mitoxantrone and methotrexate with the reasonable expectation that the compounds could be incorporated into lipoproteins while maintaining their biological properties as taught by Favre.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone Inquiry

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara P. Badio whose telephone number is 571-272-0609. The examiner can normally be reached on M-F from 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Barbara P. Badio/
Primary Examiner, Art Unit 1628